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Arizona Corporation Commission

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9 **IN THE MATTER OF QWEST
CORPORATION'S FILING AMENDED
RENEWED PRICE REGULATION PLAN.**

DOCKET NO. T-01051B-03-0454

11
12 **IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS.**

DOCKET NO. T-00000D-00-0672

**QWEST CORPORATION'S RESPONSE
IN OPPOSITION TO XO
COMMUNICATIONS' APPLICATION
FOR LEAVE TO INTERVENE**

16 Qwest Corporation ("Qwest") opposes the Application of XO Communications Services,
17 Inc. ("XO") for Leave to Intervene ("Motion"). The Motion is untimely, and if granted will
18 unduly broaden the issues presented and will adversely prejudice the existing parties who have
19 been active participants in this case.

20 XO's Motion is untimely. By Procedural Order entered on July 1, 2004, the
21 Administrative Law Judge set October 9, 2004 as the deadline for filing all motions to intervene.
22 XO is now nearly five months out-of-time.

23 XO's late intervention in this case would violate principles of fundamental fairness. In
24 addition to the intervention deadline, the July 1 Procedural Order also set down an extensive
25 schedule of procedural matters. Intervenor testimony and exhibits were filed on or before
26 October 19, 2004. Subsequent dates for rebuttal testimony and exhibits, and surrebuttal

1 testimony and exhibits have also come and gone. Furthermore, there has been extensive
2 discovery in this Docket. The discovery period closed January 30, 2005. Thousands upon
3 thousands of pages of testimony, exhibits, and discovery responses have been prepared and
4 exchanged in a timely manner during every phase of this complicated case between and among
5 the parties who have participated. Due solely to XO's own inaction, XO has not participated in
6 any of these phases of the case. While XO represents in its Motion that it does not seek to
7 "unduly" broaden the nature or scope of the issues, neither Qwest, nor presumably any other
8 party, has any knowledge of the issues XO wishes to bring forward, or what XO's positions may
9 be on those issues. Whatever XO's issues may be, or its positions may be with respect to the
10 issues already identified and subject to litigation in the case, are unknown to Qwest, and given
11 the lack of opportunity for Qwest to conduct discovery, will remain unknown and not subject to
12 any meaningful opportunity for examination.

13 In its Motion, XO does not suggest what should be done with respect to the discovery
14 process. Granting the XO Motion would raise hard questions about whether the parties are
15 obligated to share discovery with XO that has previously been served upon the other parties.
16 Even more exacerbating, many of the discovery responses contain confidential information or
17 highly confidential information, subject to a protective order in this docket. Qwest submits that
18 it would be wholly unfair and would materially and adversely prejudice its position if it were
19 required to produce its discovery responses, containing both confidential and non-confidential
20 information, with XO at this stage of the litigation.

21 In its Motion, XO states as justification for its request that "as a result of recent
22 settlement negotiations by the parties, substantive information regarding the nature of the
23 disputes being resolved is no longer available in the public docket," and that "while XO does not
24 intend to raise new issues in the docket, it does have an interest in knowing what issues are being
25 addressed and resolved." XO overlooks the fact that any resolution of the issues that is proposed
26 by parties in settlement discussions must be brought publicly before the Administrative Law

1 Judge, and subsequently before the Commission. XO will have ample opportunity to examine
2 the additional evidence that will be introduced into the record at that time and to inform the
3 Commission of its position during the public comment portion of the hearing. XO's stated
4 concern that substantive information is no longer available in the public docket due to the
5 settlement negotiations is therefore specious, and should be disregarded.

6 For the foregoing reasons, Qwest opposes XO's Motion, and requests that the
7 Commission deny it.

8
9 DATED this 8th day of March, 2005.

10 QWEST CORPORATION

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2 **filing this 8th day of March, 2005 to:**

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7 **COPY of the foregoing delivered**
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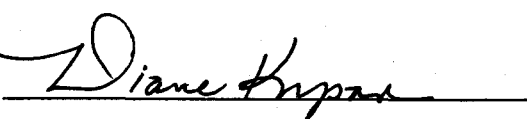
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- 9 One Point Communications
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- 13 Elk Grove Village, IL 60007
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- 18 Rio Virgin Telephone Co.
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- 20 Estacada, OR 97023-000
- 21 South Central Utah Telephone Association, Inc.
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